

PUBLIC REDACTED VERSION OF
Annex II to the Defence Request for Interim Measures

States Parties to the Rome Statute of the International Criminal Court

Via: Ms. Silvia Fernández de Gurmendi

The President of the Assembly of States Parties

Secretariat of the Assembly of States Parties

International Criminal Court

Oude Waalsdorperweg 10

2597 AK The Hague

The Netherlands

10 March 2023

Dear Madam President,

I am addressing you in my capacity as Lead Counsel for Mr Maxime Mokom, an accused before the International Criminal Court.

Mr Mokom is eligible for provisional release. On 8 March 2023, Pre-Trial Chamber II was open in expressing its regret that despite the fact that Mr Mokom's detention was now without a legal basis, in the absence of a State willing to accept and enforce the conditions of his release, he must remain detained.¹

The urgent need for cooperation from States Parties is now acute. The Court has reached out to ■■■ States, and none have accepted to facilitate the provisional release of Mr Mokom. This cannot be reconciled with the preamble of the Rome Statute, according to which State Parties are "Resolved to guarantee lasting respect for and the enforcement of international justice".

Article 86 of the Rome Statute creates a general obligation on States Parties to cooperate **fully** with the Court in its investigation and prosecution of crimes within the Court's jurisdiction. The detention and provisional release of accused are core functions of the prosecution of crimes. The absence of State Party cooperation is therefore effectively preventing the Court from being able to exercise some of its crucial functions, namely releasing a person who is still presumed innocent, and whose continued detention runs afoul of that presumption of innocence.

His Honour Judge Ambos recently observed that "[g]iven the importance of the presumption of innocence and the right to liberty, the world-wide practice of prolonged pre-trial detention, including the practice of international criminal tribunals, is deplorable". We would imagine that you, and indeed all the principals of the International Criminal Court, share this view.

However, to date, the willingness of States Parties to cooperate with the Court has extended largely to the building of cases and conviction of accused, and not to the many other aspects of the Court's operation which are not directed towards these ends. Including, provisional release.

¹ *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, ICC-01/14-01/22-173-Red, Public Redacted Version of 'Decision on Interim Release', 8 March 2023.

If the ICC is indeed engaging in fair trials, indefinite and mandatory pre-trial detention of accused cannot be the only option it offers. Along with the enormous responsibility of detaining those presumed to be innocent, comes the concomitant duty to facilitate their release when detention no longer has a legal basis. Otherwise, the fairness of the Court's proceedings is necessarily undermined. The failure of States Parties to recognize that facilitating provisional release of accused is as important as arresting and surrendering them, appears to be a failing on the part of the international criminal law community to discuss and normalize issues surrounding release. The fairness of ICC proceedings, and not just their appearance, is put at risk by the inability of the Court to release those who must no longer be detained.

With this in mind, I am writing to ask that in your capacity of the President of the Assembly of States Parties, you issue an urgent call to States Parties to, in the first instance, comply with their commitment to cooperate with the Court by facilitating the provisional release of Mr Mokom as a matter of urgency and, in the second instance, to liaise with the Registry about formalizing Agreements on Interim Release and Release of Persons to prevent this situation arising in the future.

I would be very grateful for a response. Please let me know if you need any more information from my end.

Yours faithfully



Philippe Larochelle,
Lead Counsel of Mr Maxime Mokom

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